

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BOSTON SCIENTIFIC CORPORATION )  
and BOSTON SCIENTIFIC SCIMED, INC., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 05-768-SLR  
 )  
CONOR MEDSYSTEMS, INC., )  
 )  
Defendant. )  
 )

## **CONOR'S MOTION TO EXTEND DISCOVERY DEADLINES**

Defendant Conor Medsystems, Inc. (“Conor”) hereby moves the Court to extend several upcoming discovery deadlines by about three weeks, given the current state of discovery in this action. A proposed Amended Scheduling Order is attached hereto as Exhibit A. In support of this motion, Conor states:

1. The current fact discovery cut-off is February 14, 2007 (D.I. 36, ¶ 2(b)).
2. The parties have produced hundreds of thousands of pages of documents, many of which were not produced until December 1, 2006. Additional documents have been produced since then and continue to be produced.
3. With two and one-half weeks left in the period for fact discovery, the parties are just beginning to schedule and take depositions. To date, the parties have taken a single day of one deposition (Dr. Jang).<sup>1</sup> There are 23 deposition notices currently outstanding --

<sup>1</sup> Conor is currently seeking a second day with Dr. Jang, which Dr. Jang thus far is resisting. Conor also intends to raise that issue with the Court.

three Rule 30(b)(6) depositions, and 20 individual depositions. There is simply not enough time in the current schedule to complete these depositions.

4. Most of the depositions have not been scheduled yet, and plaintiffs Boston Scientific Corporation and Boston Scientific Scimed, Inc. (collectively, "BSC") only yesterday provided dates for most of their deponents, all but one during the February 6-14 period. BSC has offered its deponents at various locations around the country, with three or four depositions set to occur simultaneously on a number of days, seriously prejudicing Conor's ability to prepare for and take these depositions and obtain the discovery it needs to prepare its case for trial.

5. In light of the state of discovery, Conor approached BSC and asked whether they would agree to a short extension -- generally of about three weeks -- of some of the upcoming discovery deadlines. Conor proposed the following dates:

<u>Event</u>	<u>Current Date</u>	<u>Conor's Proposed Date</u>
Claim construction issue identification	February 7, 2007	March 2, 2007
Fact discovery cut-off	February 14, 2007	March 9, 2007
Opening expert reports	February 23, 2007	March 19, 2007
Joint claim construction statement	March 13, 2007	April 5, 2007
Rebuttal expert reports	March 23, 2007	April 12, 2007
Expert discovery cut-off	April 20, 2007	April 30, 2007
Summary judgment motions	May 1, 2007	May 11, 2007
Opening claim construction briefs	May 1, 2007	May 11, 2007
Answering claim construction briefs	May 22, 2007	May 31, 2007

6. Conor is not seeking by this motion to move the June 22, 2007 *Markman* hearing date or the October 15, 2007 trial date.

7. BSC rejected Conor's proposal, responding that at most it might agree to extend some of the dates by one week.

8. It is not reasonable to expect that the parties can complete the outstanding depositions in the time remaining in the current fact discovery period. Conor believes that the Court's Scheduling Order should be amended to reflect the current state of discovery in this case, and to permit the parties to complete fact discovery so as not to prejudice either side's ability to prepare its case and obtain the discovery that it needs.

9. In addition, the parties still have not agreed on the terms of a Protective Order for confidential information, so it is not clear who has access to certain confidential information, thus hampering Conor's ability to prepare for and take depositions.

10. Conor respectfully requests that the Court extend the discovery deadlines in accordance with the dates outlined above, and as reflected in the attached proposed Amended Scheduling Order.

11. Pursuant to D. Del. Local Rule 16.5, I certify that a copy of this request has been sent to Conor.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Rodger D. Smith II

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January 26, 2007  
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**RULE 7.1.1 CERTIFICATE**

I hereby certify that counsel for defendant has discussed the subject of the foregoing motion with counsel for plaintiffs, and the parties have not been able to reach agreement on the issues raised in the motion.

/s/ Rodger D. Smith II  
Rodger D. Smith II (#3778)

January 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2007, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

Josy W. Ingersoll  
Young, Conaway, Stargatt & Taylor, LLP

I further certify that I caused to be served copies of the foregoing document on January 26, 2007, upon the following in the manner indicated:

**BY EMAIL AND HAND**

Josy W. Ingersoll  
Young, Conaway, Stargatt & Taylor, LLP  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, DE 19899

**BY EMAIL**

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